



[Billing Code: 6750-01-S]

**FEDERAL TRADE COMMISSION
Agency Information Collection Activities;
Proposed Collection; Comment Request**

AGENCY: Federal Trade Commission (“FTC” or “Commission”).

ACTION: Notice.

SUMMARY: The FTC intends to ask the Office of Management and Budget (“OMB”) to extend for an additional three years the current Paperwork Reduction Act (“PRA”) clearance for information collection requirements contained in the Commission’s Business Opportunity Rule (“Rule”). That clearance expires on January 31, 2018.

DATES: Comments must be submitted by [INSERT DATE 60 DAYS AFTER DATE OF PUBLICATION IN THE *FEDERAL REGISTER*].

ADDRESSES: Interested parties may file a comment online or on paper, by following the instructions in the Request for Comment part of the SUPPLEMENTARY INFORMATION section below. Write “Business Opportunity Rule Paperwork Comment, FTC File No. P114408” on your comment, and file your comment online at <https://ftcpublic.commentworks.com/ftc/BusinessOpportunityRulePRA> by following the instructions on the web-based form. If you prefer to file your comment on paper, mail your comment to the following address: Federal Trade Commission, Office of the Secretary, 600 Pennsylvania Avenue, NW, Suite CC-5610 (Annex J), Washington, DC 20580, or deliver your comment to the following address: Federal Trade Commission, Office of the Secretary, Constitution Center, 400 7th Street, SW, 5th Floor, Suite 5610, Washington, DC 20024.

FOR FURTHER INFORMATION CONTACT: Requests for additional information should be addressed to Christine M. Todaro, Attorney, Division of Marketing Practices, Bureau of Consumer Protection, Federal Trade Commission, 600 Pennsylvania Avenue, NW, CC-8528, Washington, D.C. 20580, (202) 326-3711.

SUPPLEMENTARY INFORMATION: Under the PRA, 44 U.S.C. 3501-3521, federal agencies must obtain approval from OMB for each collection of information they conduct or sponsor. “Collection of information” means agency requests or requirements that members of the public submit reports, keep records, or provide information to a third party. 44 U.S.C. 3502(3); 5 CFR 1320.3(c). As required by section 3506(c)(2)(A) of the PRA, the FTC is providing this opportunity for public comment before requesting that OMB extend the existing clearance for the information collection requirements contained in the Business Opportunity Rule, 16 CFR Part 437 (OMB Control Number 3084-0142).

The FTC invites comments on: (1) whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) the accuracy of the agency’s estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.*, permitting electronic submission of responses.

The Business Opportunity Rule requires business opportunity sellers to furnish to prospective purchasers a disclosure document that provides information relating to the seller, the seller's business, the nature of the proposed business opportunity, as well as additional information regarding any claims about actual or potential sales, income, or profits for a prospective business opportunity purchaser. The seller must also preserve information that forms a reasonable basis for such claims. These disclosure and recordkeeping requirements are subject to the PRA.

The Rule is designed to ensure that prospective purchasers of a business opportunity receive information that will help them evaluate the opportunity that is presented to them. Sellers must disclose five key items of information in a simple, one-page document:

- the seller's identifying information;
- whether the seller makes a claim about the purchaser's likely earnings (and, if the seller checks the "yes" box, the seller must provide information supporting any such claims);
- whether the seller, its affiliates or key personnel have been involved in certain legal actions (and, if yes, the seller must provide a separate list of those actions);
- whether the seller has a cancellation or refund policy (and, if yes, the seller must provide a separate document stating the material terms of such policies); and
- a list of persons who bought the business opportunity within the previous three years.

Misrepresentations and omissions are prohibited under the Rule, and for sales conducted in languages other than English, all disclosures must be provided in the language in which the sale is conducted.

PRA Burden Analysis

Subject to public comment to shed further light, the FTC retains its respondent population estimates from its prior OMB clearance for the information collection requirements under the Rule.¹ Thus, FTC staff estimates there are approximately 3,050 business opportunity sellers covered by the Rule, including vending machine, rack display, work-at-home, and other opportunity sellers. Staff also estimates that approximately 10% of the 3,050 business opportunity sellers covered by the Rule reflects an equal amount of new and departing business entrants (thus, for simplicity, staff assumes that, for a given year, there are 2,745 existing business opportunity sellers plus 305 new entrants to the field). Additionally, staff estimates that approximately 165 of business opportunity sellers market business opportunities in Spanish (in addition to English) and approximately 95 sellers market in languages other than English or Spanish² (in addition to English).

¹ 79 FR 73074 (Dec. 9, 2014).

² To estimate how many of the 3,050 sellers market business opportunities in languages other than English, FTC staff relies upon 2015 United States Census Bureau (“Census”) data. http://factfinder2.census.gov/faces/tableservices/jsf/pages/productview.xhtml?pid=ACS_12_1YR_S1601&prodType=table. Calculations based upon this data reveal that approximately 5.4% of the United States population speaks Spanish at home and speaks English less than “very well.” Calculations based upon that same survey reveal that approximately 3.1% of the United States population speaks a language other than Spanish or English at home and speak English less than “very well.” Staff thus projected that 5.4% of all entities selling business opportunities market in Spanish and 3.1% of all entities selling business opportunities market in languages other than English or Spanish.

A. Estimated Hours Burden

The burden estimates for compliance will vary depending on the particular business opportunity seller's prior experience with the Rule. Commission staff estimates that the projected 2,745 existing business opportunity sellers will require no more than approximately two hours to update the disclosure document [5,490 total hours]. Staff further projects that the estimated 305 new business opportunity sellers will require no more than approximately five hours to develop the disclosure document [1,525 total hours]. Both existing and new business opportunity sellers will require approximately one hour to file and store records [3,050 total hours], for a cumulative total of 10,065 hours [5,490 hours + 1,525 hours + 3,050 hours] per year to meet the Rule's disclosure and recordkeeping requirements.

B. Estimated Labor Cost

Labor costs are determined by applying applicable wage rates to associated burden hours. Commission staff assumes that an attorney likely would prepare or update the disclosure document at an estimated hourly rate of \$250. Accordingly, staff estimates that cumulative labor costs are \$2,516,250 [10,065 hours x \$250 per hour].

C. Estimated Non-Labor Costs:

1. Printing and Mailing of the Disclosure Document

Business opportunity sellers must also incur costs to print and distribute the single-page disclosure document, plus any attachments. These costs vary based upon the length of the attachments and the number of copies produced to meet the expected demand. Commission staff estimates that 3,050 business opportunity sellers will print and mail approximately 1,000 disclosure documents per year at a cost of \$1.00 per

document, for a total cost of \$3,050,000. Conceivably, many business opportunity sellers will elect to furnish disclosures electronically; thus, the total cost could be much less.

2. Translating the Required Disclosures Into a Language Other Than English

The Rule requires that sellers update their disclosures. The costs associated with translating the disclosures will vary depending upon a business opportunity seller's prior experience with the Rule and the language the seller uses to market the opportunity. For example, existing and new business opportunity sellers marketing in Spanish will not incur costs to translate the disclosure document as Appendices A and B to the Rule provide, respectively, illustrations of the requisite disclosure documents in English and Spanish. Existing sellers, regardless of the non-English language used to present disclosures, may incur translation costs to update the document. New entrants that market business opportunities in languages other than English or Spanish (in addition to an assumed use of disclosure documents in English) will incur translation costs to translate Appendix A from English and to enter equivalent responses in these other languages.

As stated above, using assumptions informed by Census data (see footnote 2), FTC staff estimates that 165 sellers market business opportunities in Spanish and an additional 95 sellers market in languages other than English or Spanish. This includes an estimated 10 new entrants in the latter sub-category (based on the assumption that 10% yearly of a given group consists of new entrants with an equal offset for departing business entities). Those new entrants will incur initial translation costs to draft a disclosure document consistent with Appendix A to the Rule.

There are 485 words in Appendix A to the Rule. Therefore, the total cost burden to translate the disclosure document for the 10 new business opportunity sellers marketing in a language other than English or Spanish will be approximately \$849 [10 sellers x (17.5 cents³ per word x 485 words)].

For purposes of this PRA analysis, staff assumes that both new and existing business opportunity sellers marketing business opportunities in languages other than English [260 sellers]: (1) are marketing in both English and another language; (2) are not incorporating any existing materials into their disclosure document; (3) have been the subject of civil or criminal legal actions; (4) are making earnings claims; (5) have a refund or cancellation policy; and (6) because of all of the above assumptions, require approximately 250 words (approximately one standard, double-spaced page) to translate their updates, in the case of existing business opportunity sellers, or supply and translate their initial disclosures, in the case of new business opportunity sellers. Therefore, the total cost to translate the updates or to translate from English the initial disclosures is approximately \$11,375 [260 sellers x (17.5 cents per word x 250 words)].

Thus, cumulative estimated non-labor costs are \$3,062,224 (\$3,050,000 + \$849 + \$11,375).

Request for Comment:

You can file a comment online or on paper. For the FTC to consider your comment, we must receive it on or before [INSERT DATE 60 DAYS AFTER DATE OF PUBLICATION IN THE *FEDERAL REGISTER*]. Write “Business Opportunity Rule Paperwork Comment, FTC File No. P114408” on your comment. Your comment –

³ Staff estimates that it will cost approximately 17.5 cents to translate each word into the language the sellers use to market the opportunities.

including your name and your state – will be placed on the public record of this proceeding, including, to the extent practicable, on the public Commission Website, at <http://www.ftc.gov/os/publiccomments.shtm>. As a matter of discretion, the Commission tries to remove individuals' home contact information from comments before placing them on the Commission Website.

Postal mail addressed to the Commission is subject to delay due to heightened security screening. As a result, we encourage you to submit your comments online, or to send them to the Commission by courier or overnight service. To make sure that the Commission considers your online comment, you must file it at <https://ftcpublishcommentworks.com/ftc/BusinessOpportunityRulePRA> by following the instructions on the web-based form. When this Notice appears at <http://www.regulations.gov/#!home>, you also may file a comment through that website.

If you file your comment on paper, write “Business Opportunity Rule Paperwork Comment, FTC File No. P114408” on your comment and on the envelope, and mail it to the following address: Federal Trade Commission, Office of the Secretary, 600 Pennsylvania Avenue, NW, Suite CC-5610 (Annex J), Washington, DC 20580, or deliver your comment to the following address: Federal Trade Commission, Office of the Secretary, Constitution Center, 400 7th Street, SW, 5th Floor, Suite 5610, Washington, DC 20024. If possible, submit your paper comment to the Commission by courier or overnight service.

Because your comment will be placed on the publicly accessible FTC Website at <https://www.ftc.gov/>, you are solely responsible for making sure that your comment does not include any sensitive or confidential information. In particular, your comment should

not include any sensitive personal information, such as your or anyone else's Social Security number; date of birth; driver's license number or other state identification number, or foreign country equivalent; passport number; financial account number; or credit or debit card number. You are also solely responsible for making sure that your comment does not include any sensitive health information, such as medical records or other individually identifiable health information. In addition, your comment should not include any "trade secret or any commercial or financial information which . . . is privileged or confidential" – as provided by Section 6(f) of the FTC Act, 15 U.S.C. 46(f), and FTC Rule 4.10(a)(2), 16 CFR 4.10(a)(2) – including in particular competitively sensitive information such as costs, sales statistics, inventories, formulas, patterns, devices, manufacturing processes, or customer names.

Comments containing material for which confidential treatment is requested must be filed in paper form, must be clearly labeled "Confidential," and must comply with FTC Rule 4.9(c). In particular, the written request for confidential treatment that accompanies the comment must include the factual and legal basis for the request, and must identify the specific portions of the comment to be withheld from the public record. *See* FTC Rule 4.9(c). Your comment will be kept confidential only if the General Counsel grants your request in accordance with the law and the public interest. Once your comment has been posted on the public FTC Website – as legally required by FTC Rule 4.9(b) – we cannot redact or remove your comment from the FTC Website, unless you submit a confidentiality request that meets the requirements for such treatment under FTC Rule 4.9(c), and the General Counsel grants that request.

The FTC Act and other laws that the Commission administers permit the collection of public comments to consider and use in this proceeding as appropriate. The Commission will consider all timely and responsive public comments that it receives on or before [INSERT DATE 60 DAYS AFTER DATE OF PUBLICATION IN THE *FEDERAL REGISTER*]. For information on the Commission's privacy policy, including routine uses permitted by the Privacy Act, see <https://www.ftc.gov/site-information/privacy-policy>.

David C. Shonka,
Acting General Counsel.

[FR Doc. 2017-20846 Filed: 9/27/2017 8:45 am; Publication Date: 9/28/2017]